IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2152 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALISHA DULLASHA SAIYAD

Versus

CONSERVATOR OF FORESTS

Appearance:

1. Special Civil Application No. 2152 of 1987

MR. SHALIN N. MEHTA, for Petitioner No. 1

MR CH VORA for Petitioner No. 1

MS. NANDINI JOSHI, AGP, for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 5/11/2001

ORAL JUDGEMENT

1. Shri Alisha Dullasha Saiyad-petitioner has filed this petition praying for quashing and setting aside order dated 1.2.1986 passed by the Chief Conservator of Forests removing the petitioner from service and also order dated 15.12.1986 passed by the Gujarat Civil Services Tribunal, Gandhinagar in appeal No. 156 of 1986 dismissing the appeal preferred by the petitioner at

Annexure-L to the petition.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner was appointed as a Forest Guard on 31.12.1974. The petitioner was posted at Nakhatrana in Kutch District. The petitioner received a charge-sheet dated 25.1.1992 from the Conservator of Forests. In the aforesaid charge sheet three charges were levelled against the petition, namely, (1) misbehaviour with superior officers, (2) disobeying the orders of the superiors and (3) unauthorised absence from duty.

2.2 The petitioner submitted his reply to the charge sheet on 12.2.1982. The petitioner denied the charges levelled against him in his reply. So far as charge No. 1 was concerned, it was stated in the reply that the petitioner had never misbehaved with his superior authorities.

2.3 The petitioner stated that an Inquiry Officer was appointed to inquire into the charges levelled against him. Witnesses, namely, Shri Vinodbhai, Shri Jairamdas, Shri Manibhai, Shri Nanuji, Shri Dineshchandra, Shri Bhanuprasad and Shri Alisha were examined before the Inquiry Officer.

2.4 The Inquiry Officer submitted his report dated 28.2.1983. The Inquiry Officer in his report came to the conclusion that all the charges levelled against the petitioner are proved. The Inquiry report is produced before this court.

2.5 The Conservator of Forests, Mehsana, issued a show cause notice dated 11.3.1983 to the petitioner asking him to show cause as to why he should not be removed from service and asking him to submit his reply to the said show cause notice within a period of ten days thereof. The petitioner submitted his reply to the aforesaid show cause notice on 23.3.1983. The petitioner stated in the said reply that the charges levelled against him were not proved before the Inquiry officer. It was further stated that the Inquiry Officer had not considered the relevant record and had not considered the deposition of the witnesses.

2.6 It was further submitted that Conservator of Forests, Bhuj, issued another show cause notice dated 23.9.1983 stating as to why the petitioner should not be dismissed from service. The petitioner was asked to

tender his explanation. The petitioner submitted his reply on 10.10.1983 to the above said show cause notice wherein he has elaborately dealt with every aspect. The Conservator of Forests, Bhuj, passed an order dated 25.10.1983 dismissing the petitioner from service.

2.7 Being aggrieved and dissatisfied with the aforesaid order of the Conservator of Forests, Bhuj, the petitioner preferred an appeal to the Chief Conservator of Forests, Kothi Compound, Baroda on 31.10.1983. The Chief Conservator of Forests passed order dated 1.2.1986 modifying the order of dismissal of the petitioner. The Chief Conservator of Forests by his aforesaid order was pleased to remove the petitioner from service. The said order has been produced at Annexure-K to this petition.

3. Being aggrieved and dissatisfied with the order of the Chief conservator of Forests dated 1.2.196, the petitioner preferred appeal, being appeal No. 156 of 1986, before the Gujarat Civil Services Tribunal, Gandhinagar who was pleased to dismiss the appeal of the petition by his order dated 15.12.1986. The Tribunal after taking into consideration of the submissions of the petitioner was pleased to observe as under:-

"It is admitted position that an alteration had taken place on 10.6.1981 in the Rang Forest Office between the appellant and Range Forest Officer Mr. Mehta regarding non-payment of salary to the appellant. The behaviour of the appellant was unbecoming of a Government servant and especially of a member of the disciplined force in uniform. Similarly, it is established that the appellant was irregular in his attendance and had not submitted reports at the relevant time regarding his absence of several occasions that had resulted in delayed drawl and disbursement of his salary for the disputed period. He has also been found to have behaved rudely with Range Forest Officer Mr. Bhatt. The Inquiry Officer has discussed in detail the evidence and submissions of both the sides in respect of all the three charges and has also given reasons is support of this findings. The Inquiry Officer has assessed the evidence properly. In view of this position, we are not inclined to interfere with the decisions of both the respondents so far as the misconduct is concerned. The legal challenge that the first respondent had imposed the penalty of dismissal from service when the show cause notice had

mentioned only the imposition of penalty of removal from service, has already been appreciated in the first appeal by the second respondent. hence, the appellant's grievance on this score also does not survive. The appeal is liable to dismissed."

4. Being aggrieved and dissatisfied with the aforesaid judgement of the Tribunal, the petitioner has filed this petition before this court on various grounds. The learned counsel for the petitioner submitted that originally there were three charges levelled against the petitioner in the chargesheet which I have reproduced earlier. However, he submitted that there are inquiry proceedings. It has come in the evidence of Shri Bhanuprasad M. Bhatt that one day when the higher officer has scolded the petitioner, the petitioner was excited and has given a slap to Shri Bhanuprasad M. Bhatt. He submitted that this fact was not narrated in the charge-sheet and the Inquiry Officer has relied on the evidence of Shri Bhanuprasad Bhatt and has come to the conclusion that the petitioner has conducted misconduct. He submitted that therefore this court ought not to have relied on the report of the Inquiry officer to that extent as the same was not shown in the charge-sheet. The learned counsel for the petitioner Mr. Shalin Mehta has also invited my attention to the evidence of Shri Vinod Parshottam Chauhan. He has also invited my attention to evidence of Shri J.J. Kapadia regarding absenteeism of the petitioner, evidence of Shri Manibhai Ishwarbhai Patel who has only stated that the petitioner was excited but he has not mentioned about giving slap to Shri Bhanuprasad M. Bhatt. He has also invited my attention to the evidence of Shri Nanuji Taktaji Thakerda, Shri Dineshchandra Chandulal Mehta, Shri Bhanuprasad Mohanlal Bhatt, Shri Alisha D. Saiyad and also report of the Inquiry Officer, reply of the petitioner in this behalf. He submitted that this is a question of evidence and Inquiry Officer ought not to have come to the conclusion that the charges levelled against the petitioner were proved.

5. He has also submitted that in any view of the matter the charges even if it is proved, the authority ought not to have imposed punishment of dismissal and/or removing the petitioner from services because the said punishment is disproportionate to the charges levelled against the petitioner because the charges levelled against the petitioner are absenteeism and disobeying the order of the superior officer. These are very small charges and the petitioner ought not to have been

dismissed from services.

6. He further submitted that the petitioner was harassed by one Shri D.C. Mehta and there was no evidence before the Inquiry Officer to hold the petitioner guilty of the charges levelled against him and therefore the finding of the Inquiry Officer is perverse. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of BHAGAT RAM VS. STATE OF HIMACHAL PRADESH reported in AIR 1983 SC 454 wherein the Hon'ble Supreme Court in para 16 observed that in a petition under Article 226 of the Constitution the High Court does not function as a court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, the High Court can always interfere with the same. The learned counsel for the petitioner submitted that the Tribunal ought to have held that the finding of the Inquiry Officer were perverse and ought to have allowed the appeal filed by the petitioner on that ground only. He further submitted that the charges levelled against the petitioner were trivial in nature. He further submitted that there was no evidence before the Inquiry Officer on the basis of which he could come to the conclusion that the charges levelled against the petitioner were proved. Therefore, the findings of the Inquiry Officer and the order passed by the Disciplinary Authority and the Judgement of the Tribunal are illegal, null and void and contrary to law.

7. He submitted that the Tribunal has erred in holding that it is not inclined to interfere with the decision of both the respondents so far as misconduct is concerned. He relied on the decision of the Hon'ble Supreme Court in the case of RAMAKANT MISRA VS. STATE OF U.P. AND OTHERS reported in AIR 1982 SC 1552 and also the decision in the case of BHAGAT RAM VS. STATE OF HIMACHAL PRADESH AND OTHERS (supra) in which at para 15 the Hon'ble Supreme Court has observed thus:

> "It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

8. The learned counsel for the petitioner has further relied on the judgement of the Hon'ble Supreme Court in the case of VED PRAKASH GUPTA VS. M/S. DELTON CABLE INDIA (P) LTD. reported in AIR 1984 SC 914 in which at para the Hon'ble Supreme Court has observed at para 13

thus:-

"We are also of the opinion that `no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that vitcimization or unfair labour practice could well be inferred fro the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service."

9. The learned counsel for the petitioner has also relied on the principle laid down in the case of C.V. KOTECHA VS. HALAR SALT AND CHEMICAL WORKS reported in 1985(1) GLR 146 and also judgement in the case of SARDARSINH DEVISINH VS. DISTRICT SUPERINTENDENT OF POLICE, SABARKANTHA DIST. & OTHERS reported in 1985(2) G.L.R. 1368.

10. Mr. Mehta, learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of RAMA KANT MISRA VS. STATE OF U.P. AND OTHERS reported in AIR 1982 SC 1552 in which on page 1554 at para 7 the Hon'ble Supreme Court has observed as under:-

"Before we can exercise the discretion conferred by S. 11A, the court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier it is a well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged."

11. The learned counsel has further relied on the decision of the Hon'ble Supreme Court in the case of RAM KISHAN VS. UNION OF INDIA & ORS. reported in (1996) I-

LLJ 982 in which on page 985 at para 11 the Hon'ble Supreme Court has observed thus:

"It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated."

11.1 Further reliance is placed on the decision of the Hon'ble Supreme Court in the case of KULDEEP SINGH VS. COMMISSIONER OF POLICE AND OTHERS reported in (1999) 2 SCC 10 in which on page 13 at para 6 the Hon'ble Court has observed as under:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

11.2 He has also relied on the decision of the Hon'ble Supreme Court in the case of B.C. CHATURVEDI VS. UNION OF INDIA AND OTHERS reported in (1995) 6 SCC 749 in which on page 762 at para 18 it is held thus:

"A review of the above legal position would

> establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. they are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

11.3 The learned counsel for the petitioner has also relied on the judgement of the Bombay High Court in the case of DALAL PROJECT SERVICES PVT. LTD. VS. AKARAM SHANKAR CHAUKEKAR & ANOTHER reported in 1999 I-LLJ 48. He submitted that the subject matter of clause is misconduct of minor or technical character and the authority ought not to have imposed major punishment of dismissal from service in this behalf.

12. On the other hand, Ms. Joshi, learned A.G.P. for the respondent has submitted that in this case the Department issued charge-sheet. The Department has alleged serious ground of misbehaviour with superior officers, disobeying the orders of the superior officers and unauthorised absence from duty. The Inquiry Officer conducted inquiry, examined the witnesses and taken oral evidence of the witnesses. The petitioner was allowed to cross-examine the witnesses and ultimately report of the Inquiry Officer was given to the petitioner. The Department also issued second show cause notice to the petitioner and the petitioner filed his reply to the show cause notice. Thereafter, the authority has taken a decision of dismissal of the petitioner.

12.1 Being aggrieved and dissatisfied with the said order, the petitioner filed appeal before the appellate authority and the appellate authority considered those facts and instead of terminating the services of the petitioner, the appellate authority removed the petitioner from service because the dismissal order was

not contemplated in the second show cause notice.

12.2 Being aggrieved and dissatisfied with the aforesaid order, the petitioner preferred appeal before the Service Tribunal. The appellate authority considered all evidences on record and given cogent and convincing reasons and dismissed the appeal. The learned A.G.P. Ms. Joshi submitted that under Article 227 of the Constitution this court has a very limited jurisdiction to appreciate the facts and the evidence led before the domestic Inquiry Officer particularly when the authority has considered the entire evidence on record, the principles of natural justice are observed, no relevant facts are omitted nor any irrelevant facts have been taken into consideration. The authority has not committed any illegality and the punishment awarded was proportionate to the charges levelled against the petitioner and it is not shockingly disproportionate to the charges levelled against the petitioner. She submitted that, therefore, this court may not review the order of the authorities in this behalf.

12.3 In support of the aforesaid submissions, Ms. Joshi, learned A.G.P. relied on the decision of the Hon'ble Supreme Court in the case of STATE OF HARYANA VS. RATAN SINGH reported in AIR 1977 SC 1512 particularly paragraph No. 4 on page 1513 in which it is inter alia observed as under:

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that the departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. .....The essence of a judicial approach is objectively exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgement vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.....Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond

scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore we are unable to hold that the order is invalid on that ground."

12.4 The learned A.G.P., Ms. Joshi, has also relied on another decision of the Hon'ble Supreme Court in the case of RAE BARELI KSHETRIYA GRAMIN BANK VS. BHOLA NATH SINGH AND OTHERS reported in AIR 1997 SC 1908 particularly para 6 on page 1909 in which it is inter alia observed thus:

"Under these circumstances, the question arises: whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence as examined and to record a finding in that behalf? The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceeding under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or voidation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a Court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by the disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained."

12.5 The learned A.G.P. Ms. Joshi has further relied on the decision of the Hon'ble Supreme Court in the case of OM KUMAR AND OTHERS VS. UNION OF INDIA reported in (2001) 2 SCC 386. On page 412 at para 71 of the said decision the Hon'ble Court has held thus:-

"Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in

> disciplinary cases is questioned as `arbitrary' under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

13. In my view, serious charges of misbehaviour with superior officers, disobeying the orders of the superior officers and unauthorised absence from duty are levelled against the petitioner and looking to the entire evidence on record including the reply to the charge-sheet given by the petitioner, the Inquiry Officer has given a clear finding. Thereafter a show cause notice was issued and afterwards the order of dismissal has been passed. The appellate authority has also reduced the punishment from dismissal to removal. Thereafter, the matter was heard by Civil Service Tribunal which is a quasi judicial authority. The Tribunal has considered the entire evidence on record and the Tribunal came to the conclusion that the petitioner was guilty of the charges levelled against him. The learned counsel for the petitioner has not been able to point out any error apparent on the face of the record. There is no violation of principle of natural justice. The Inquiry Officer as well as the Tribunal has considered all material in this behalf. The charges levelled against the petitioner are very serious charges. The appellate authority as well as the Tribunal has given cogent and convincing reasons and therefore this court under Articles 226/227 of the Constitution has a very limited jurisdiction in view of the judgement of the Hon'ble Supreme Court in the case of RAE BARELI KSHETRIYA GRAMIN BANK (supra), OM KUMAR AND OTHERS (supra), STATE OF HARYANA (supra). Hence I am not inclined to interfere with the concurrent findings of facts arrived at by the appellate authority as well as the Tribunal. I do not find any substance in the contentions raised by the learned counsel for the petitioner. On the other hand,

there is a considerable force in the submissions made by the learned A.G.P. It is no doubt true that the learned counsel for the petitioner has very ably argued the matter but he has not been able to point out any error apparent on the face of the record and therefore I am not able to persuade myself to accept the contentions raised by him. On the other hand, I am prepared to accept the submissions made by the learned A.G.P. who has also very ably argued. There is considerable force in it. In short, there is no substance in the petition and therefore it requires to be rejected.

14. In my view the order of dismissal is quite proportionate to the charges levelled against the petitioner and therefore the petition is liable to be rejected. It is accordingly rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)

(pkn)